

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JASON R. GRZYBOWSKI,	§	
	§	No. 167, 2005
Defendant Below,	§	
Appellant,	§	Court Below--Superior Court
	§	of the State of Delaware, in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	
	§	Cr. ID Nos. 0007009611
Plaintiff Below,	§	0005006134
Appellee.	§	0008002162

Submitted: January 27, 2006

Decided: April 4, 2006

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 4<sup>th</sup> day of April 2006, upon consideration of the appellant's opening brief and supplemental opening brief and the State's motion to affirm and supplemental motion to affirm,<sup>1</sup> it appears to the Court that:

(1) On October 17, 2000, the appellant, Jason R. Grzybowski, pleaded guilty in the Superior Court of Sussex County to two counts of Burglary in the Second Degree and other offenses. The Superior Court sentenced Grzybowski to fourteen years and ninety days at Level V suspended for two years at Level IV home confinement followed by probation.

---

<sup>1</sup>See Supr. Ct. R. 25(a) (governing motions to affirm).

(2) On April 29, 2004, the Superior Court adjudged Grzybowski guilty of violation of probation (VOP) and sentenced him to four years at Level V suspended upon completion of the Level V Key and Level IV Residential Substance Abuse Treatment programs for probation. Grzybowski did not file an appeal.

(3) On March 21, 2005, Grzybowski filed a document entitled “motion for credit for time served” (“motion for credit”) in the Superior Court. Grzybowski requested credit for a four-month period of time – from June 22, 2000 to October 16, 2000 – during which he was held in jail in default of bail. By order dated March 28, 2005, the Superior Court denied Grzybowski’s motion on the basis that he had already received credit for that time from a sentence that was imposed on October 6, 2000 by the New Castle County Superior Court.<sup>2</sup> This appeal followed.

(4) In his opening brief and supplemental opening brief, Grzybowski does not address the Superior Court’s order of March 28, 2005, from which he

---

<sup>2</sup>*See State v. Grzybowski*, Del. Super., Cr. ID Nos. 0002012303, 0006017466, 0003007154, 9909019702, Goldstein, J. (Oct. 6. 2000) (sentencing Grzybowski, effective June 22, 2000 and with ten days of credit for time served, to six years and six months at Level V suspended after three years and sixty days for one year at Level IV suspended upon completion of Crest Program for probation). *See, e.g., Adams v. State*, 2003 WL 1890012 (Del. Supr.) (holding that defendant was not entitled to be credited twice for time previously served while incarcerated).

took this appeal. Rather, Grzybowski challenges the VOP proceeding and sentencing on April 29, 2004 in the Superior Court.

(5) It is manifest on the face of Grzybowski's opening brief and supplemental opening brief that this appeal is without merit. The issues that Grzybowski raised in his briefs, *i.e.*, issues that arise solely from the April 29, 2004 VOP proceeding and sentencing, are not cognizable in this appeal which is limited in scope to the Superior Court's March 28, 2005 denial of the motion for credit.<sup>3</sup> Conversely, Grzybowski's failure to brief any issues that he raised in his motion for credit constitutes a waiver of those issues on appeal.<sup>4</sup>

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 25(a), that the motion to affirm and supplemental motion to affirm are GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/Henry duPont Ridgely  
Justice

---

<sup>3</sup>Grzybowski had an opportunity to appeal from the April 29, 2004 VOP proceeding and sentencing, but he did not. *Strawley v. State*, 2002 WL 86687 (Del. Supr.) (citing *Carr v. State*, 554 A.2d 778 (Del. 1989)).

<sup>4</sup>*Somerville v. State*, 703 A.2d 629, 631 (Del. 1997).